



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Interim Audit Report on the Oakland County Democratic Party (LRA 946)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report ("IAR") on the Oakland County Democratic Party. The IAR contains five findings: (1) Misstatement of Financial Activity; (2) Recordkeeping for Employees; (3) Disclosure of Occupation and Name of Employer; (4) Recordkeeping for Receipts; and (5) Use of Campaign Depository. We concur with the IAR findings but have specific comments on the findings on Recordkeeping for Receipts and Use of Campaign Depository. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

II. RECORDKEEPING FOR RECEIPTS (Finding 4)

The IAR finds that the Committee failed to maintain adequate documentation to demonstrate that its gaming night contributions did not exceed \$50 per contributor. The Committee received contributions during twice-weekly "bingo nights." The IAR finds that the

average contribution at a gaming night was \$88 per person and that the Committee did not properly record and account for contributions totaling \$1,820,466. The Committee contends that, for purposes of the recordkeeping requirements under 11 C.F.R. § 102.9(a), each bingo night constituted three separate fundraising events rather than a single event because three separate gaming events were offered during the night. The Committee thus argues that it was not required to keep itemized records when participants spent less than \$50 on each of three possible gaming activities that typically took place during a bingo night, regardless of whether the participant's total spending in one night exceeded \$50.

The IAR correctly states that the Commission considered the Committee's position, sought information about separation of gaming activities and their administrative functions, and concluded that the Committee's bingo nights were not separate fundraising events, but rather were one event, requiring the Committee to obtain the name and address of any person who made contributions in excess of \$50 during a gaming night. *See Request for Commission Directive 69 Guidance Involving the Oakland County Democratic Party, LRA 946 (Jan. 30, 2014) and Request for Consideration of a Legal Question, LRA 946 (Mar. 28, 2014).* The IAR, however, does not make clear whether the Commission's interest in obtaining information about the separation of gaming activities was communicated to the Committee and, if so, the response the auditors received from the Committee.

The auditors advised this Office that it sought and received the information during a telephone conference call with the Committee and that it communicated the information to the Commission for its consideration. To clarify the IAR and assist the Commission with addressing this issue in the context of the IAR, we recommend that the Audit Division revise the IAR to discuss the Committee's response.

III. USE OF CAMPAIGN DEPOSITORY (Finding 5)

The IAR finds that the Committee failed to comply with 11 C.F.R. § 103.3(a) because the Committee did not use its campaign depository to deposit cash receipts and make cash disbursements related to its bi-weekly gaming activities. As part of this finding, the IAR notes that the cash disbursements did not comply with the Commission's regulations at 11 C.F.R. § 102.10, which require committees to use checks or similar drafts for disbursements over \$100.¹

The Committee contends that it used vouchers for some of its disbursements, and the vouchers should be considered checks or similar drafts. *See* 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 102.10. The Committee used its vouchers in the following manner. For prize awards over \$50, the Committee required the winner to complete a voucher. This voucher form contained the winner's name and address, the date on which the prize money was disbursed, the winner's signature, the signature of the bingo worker disbursing the money, the amount of the prize

¹ Since the requirement to use a campaign depository and the requirement to make disbursements with checks or similar drafts stem from separate regulatory provisions, *compare* 11 C.F.R. § 103.3(a) (campaign depository) with 11 C.F.R. § 102.10 (disbursements using checks or similar drafts), the Audit Division should consider whether separate findings or severable sub-findings are appropriate for the Draft Final Audit Report. Commission Directive 70. This allows the Commission to vote on the issues individually. *Id.*

awarded, and the nature of the game or activity for which the prize was awarded. When the prizewinner returned the completed voucher form to the bingo worker, the bingo worker paid the prize money to the prizewinner in cash. The Committee apparently retained the completed voucher forms as records of the prize payments, and reported these as prize payments to the applicable individuals.

We conclude that the Committee's vouchers are not checks or similar drafts. The Act requires political committees generally to make disbursements with checks drawn on accounts that the committees maintain at their designated depository institutions. 52 U.S.C. § 30102(h)(1). Commission regulations implementing this requirement have expanded the range of instruments or methods that committees may use to effect their disbursements by allowing committees to use "similar drafts" to checks. *See* 11 C.F.R. § 102.10. Fundamental to both the applicable statute and regulation is the requirement that the check or similar draft be drawn on an account or accounts established at the committee's campaign depository. 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 102.10.

Although there is no direct legislative history regarding these statutory provisions, the Commission has observed that the provisions seemed designed to assure a complete and reliable "paper trail" for record keeping, disclosure and audit purposes. *See* Advisory Opinion 1993-04 (Cox), n.2., *citing* Advisory Opinion 1986-18 (Bevill) (Commissioner Josefiak concurring). The Explanations and Justifications for 11 C.F.R. § 102.10 and its regulatory predecessors and cognates do not explain why the words "or similar draft" were added to the statutory language.² However, the Commission has applied the quoted language to various fact situations in advisory opinions, allowing for alternative means of making disbursements so long as the funds are drawn from a campaign depository account.³

In this case, the Committee's method of disbursing prize awards to prize winners was to pay the winners cash drawn from that evening's gate receipts maintained in a cash tray, not from a campaign depository account. The cash itself was not drawn upon an account at a campaign depository, and the Committee's requirement that the prize winner submit a completed voucher does not change this fact. Although the Committee argues that the voucher form is a "similar draft" that must be presented to a bingo worker in order for payment of the prize to ensue, the function of the voucher is not analogous to the function of a check, or of a wire transfer or computer-mediated instruction to debit an account. Unlike checks or other kinds of drafts, the voucher is not an instrument of payment that will cause a debit at the Committee's campaign

² *See, e.g.,* House Document No. 94-293, Transmitting Proposed Regulations Governing the Disclosure of Campaign Finances by Candidates and Committees Involved in Federal Elections Pursuant to Section 316(c) of the Federal Election Campaign Act of 1971, as Amended, at 32 (94th Cong., 1st Sess.) (Dec. 4, 1975); House Document No. 95-44, Transmitting The Commission's Proposed Regulations Governing Federal Elections, Pursuant to Section 316(c) of the Federal Election Campaign Act, as Amended, at 45 (95th Cong., 1st Sess.) (Jan. 12, 1977); Explanation and Justification of Regulations Concerning Amendments to Federal Election Campaign of 1971, 45 Fed. Reg. 15080, 15085 (Mar. 7, 1980).

³ *See* Advisory Opinions 1982-25 (Sigmund) (wire transfer of funds from political committee's campaign depository to creditor's bank account is "similar draft."); 1993-04 (Cox) (electronic bill-paying service to make disbursements is "similar draft" because it draws on an account maintained at a campaign depository). *See also* Advisory Opinion 1986-18 (Bevill) (committee must transfer funds it wished to use for Federal election purposes from investment account back to depository account before spending them.).

depository. *See Advisory Opinion 1993-04 (Cox)* (the fact that the computer bill paying service's operation does not involve the use of an article of paper that serves as the operative commercial instrument is not dispositive, but rather the fact that the bill-paying service involves a debiting of the campaign depository account). We, therefore, conclude that the vouchers are not checks or similar drafts, and concur with the Audit Division's finding.